REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO (OS) NO. 248 OF 2004**

Date of Decision: 3rd August, 2007

CHANDRA SHEKHAR ..... Appellant

Through Mr.V.P.Chaudhry, Sr.Advocate with Ms.Sushma, Advocates.

VERSUS

UOI & ORS. ..... Respondents.

Through Mr. Rajeeve Mehra with Mr.Arvind Sharma, Advocates.

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not ? Yes.
3. Whether the judgement should be reported in the Digest ? Yes.

SANJIV KHANNA, J:

1. The respondent herein-Union of India has filed a Civil Suit for recovery of Rs.12,47,67,414/- against the appellant, Mr.Chander Shekhar and Samajwadi Janta Party (Rashtriya).

2. The civil suit was filed in the year 2000. Written statement to the civil suit was filed by the appellant on 5th March, 2003. Replication

to the written statement was filed by the respondent/Union of India on 24.2.2004. It may be relevant to state here that the Joint Registrar before whom the civil suit was listed, had vide order dated 05.2.2003 granted three weeks time to the appellant to file the written statement and two weeks time thereafter to the respondent-plaintiff to file replication. The defendant no.2 had filed its written statement only after 07.4.2003 as the said written statement is verified on the said date as per copy placed on record.

3. When the suit came up before the learned Single Judge on 03.8.2004, an objection was raised by the appellant that the replication cannot be taken on record as it was filed much beyond the period of two weeks granted by the Joint Registrar for filing the same vide order dated 05.2.2003 and the provision of Order VIII Rule 9 read with Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as Code, for short) would apply. The learned Single Judge by the impugned order allowed the replication already filed, to be taken on record subject to costs of Rs.3,000/-. It was held that the replication, though filed belatedly, interest of justice demands that it should be taken on record so as to give a fair chance to both the parties to plead and contest their claim/case on merits. Learned Single Judge has held that the provisions of Order VIII Rule 9 of the Code are not attracted.

4. Aggrieved, the appellant has filed the present appeal. A number of objections and contentions have been raised in the present appeal.

Reference was made to the Delhi High Court (Original Side) Rules, 1967 (hereinafter referred to as Rules, for short). Chapter VI, Rule 3 states that ordinarily not more than one extension of time shall be granted to the defendant for filing written statement, provided that a second or further extension may be granted on an application made in writing setting forth sufficient grounds for such extension and supported, if so required by an affidavit. It was submitted that replication is also a written statement or additional written statement in terms of Order VIII Rule 9 of the Code. Reference was made to Order VI Rule 1 of the Code, which only refers to pleadings as plaint and written statement. Reliance was placed upon in **Sunil and Vasanth Architects and Consulting Engineers and Anr. vs. Tata Ceramics Ltd.** [AIR 1999 Kerala 88], **Salig Ram & Anr. vs. Shiv Shankar & Ors.** [AIR 1971 Punjab 437], **Jag Dutta vs. Savitri Devi** [AIR 1977 Punjab 68], **Mateshwar Dayal vs. Amar Singh** [AIR 1983 Punjab 197] and **Moti Ram vs. Baldev Kishan** [Volume 81 (1979) RLR 69 (Delhi)].

5. We are not required to go into the question whether replication to the written statement filed by the appellant should have been

permitted and allowed to be filed. It is clear from the impugned order that no such contention and objection was raised by the appellant before the learned Single Judge. In some of the decisions relied upon by the appellant **[Sunil & Vasanth Architects & Consulting Engineers vs. Tata Ceremics Ltd., Salig Ram vs. Shiv Shankar, Jag Dutta vs. Savitri Devi, Mateshwar Dayal vs. Amar Singh, Moti Ram vs. Baldev Krishan** (supra)] it has been held that replication is part of the pleadings even though Order VI Rule 1 of the Code stipulates that pleadings consists of plaint and written statement. These aspects to our mind are entirely irrelevant and immaterial for deciding the present appeal, which is against the discretion exercised by the learned Single Judge in granting time and taking on record the replication filed by the respondent subject to payment of costs. The facts of the present case do not warrant detailed examination of the rules, statutory provisions and the question whether replication is a written statement. This will be apparent from the reasons discussed below, as to why we feel that the present appeal should be dismissed.

6. As per the copy of the order sheet placed before us by the appellant vide order dated 05.2.2003, direction was given to the appellant to file written statement within three weeks after the respondent had furnished documents. The matter was renotified

for 27.8.2003 with a direction that the respondent can file replication within two weeks from the date on which copy of the written statement was received.

7. On 27th August, 2003, the Presiding Officer was on half day leave and the matter was renotified for 8th January, 2004. Thus no order was passed on the said date. On 8th January, 2004, time was sought on behalf of the respondent to file replication and documents, which was opposed. In these circumstances, vide order dated 8th January, 2004 the matter was listed before the Court on 26.2.2004. Before the said date on 24.2.2004, replication was filed. In fact the matter was not taken up for hearing on 26.2.2004 and a few dates thereafter. Next substantive order was passed on 03.8.2004 when by the impugned order the replication filed was taken on record.

8. Even if we accept the contention of the appellant that replication is nothing but written statement or additional written statement and accordingly the provisions of Order VIII Rule 1 of the Code and Rule 3 of Chapter VI of the Rules, are applicable, we do not think that the impugned order requires any modification or interference.

In **Kailash vs. Nanhku**_ AIR 2005 SC 2441, it has been held that the provisions stipulating time for filing of written statement are procedural in nature and not part of the substantive law. The reason behind prescribing time limit for filing of written statement is to prevent unscrupulous defendants from adopting dilatory tactics and delaying disposal of cases against them causing severe inconvenience to the plaintiffs who had made claims. This also chokes up Courts which are repeatedly asked to grant adjournments. The object behind prescribing time schedule in the procedure is to advance cause of justice in adversarial system but no party should ordinarily be denied an opportunity of participation in the process of justice dispensation and getting a fair chance of putting forward its case.

9. It has been held in the case of ***Sk. Salim Haji Abdul Khayumsab vs. Kumar*** *[(2006) 1 SCC 46]* that **-**

> **"14.** Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.
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> **15.** It is also to be noted that though the power of

> the court under the proviso appended to Rule 1 of Order 8 is circumscribed by the words "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided for though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of th e provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form."

10. Further, in the case of ***Rani Kusum v. Kanchan Devi*** *[(2005) 6 SCC 705]* it was observed:

> *"20* . The use of the word "shall" in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present

> context, the strict interpretation would defeat justice."

11. It was noticed that though time limit had been prescribed under Order VIII Rule 1 of the Code, consequence for failure is not specifically provided for. The same is the position with regard to Rule 3 in Chapter VI of the Rules. It is accordingly held that the Court has ample powers to extend time where facts and circumstances justify such extension. Accordingly, the said provision was to be construed as directory and not mandatory but the Court should not permit dilatory tactics to be adopted by any party, if they stand to gain by delay and so as to nullify the object and purpose behind the said Rule. Extension of time should only be granted, if there are reasons for delay and the same is adequately explained. Deliberate delays in filing pleadings and documents so as to take advantage of interim stay, putting pressure on other side, has to be dealt with sternly. Nothing of this sort has been alleged by the appellant. The respondent has filed a suit for recovery and has nothing to gain by delay. Similar view has been taken by the Supreme Court in

Salem Advocate Bar Association, Tamil Nadu vs. Union of India [AIR 2005 SC 3353], inter alia, observing that there is no restriction on the Court to grant further time even after expiry of 90 days. However, Supreme Court cautioned that frequent and liberal adjournments should not be given to nullify the period fixed under Order VIII Rule 1 of the Code.

12. Again, in **Iridium India Telecom Ltd. vs. Motorola Inc.** (2005) 2 SCC 145, the Supreme Court has held that the High Court (Original side) Rules, 1967 will prevail over the amended provision of Order VIII Rule 1 of the Code. Relying upon the said decision and after referring to Rule 3 of Chapter VI of the Rules, a Division Bench of this Court in **DDA vs. K.R.Builders Pvt. Ltd.** [119 (2005) DLT 196 (DB)] has held that Rule 3 permits extension of time. First extension of time for filing of written statement is ordinarily granted to the defendant but the second or further extension of time requires closer scrutiny and consideration. The object and purpose of the said provision is to curb delay in disposal of the suit. The expression 'further extension' as used in Rule 3 it has been held will also cover extension of time even after the second extension and it was observed :-

> “If read and interpreted in this perspective the expression 'further extension' should be

> construed as the extension to be granted after the second extension but only in exceptional and rare circumstances which are beyond the control of the parties. In other words, any extension after second extension would not be liable to be granted on a mere sufficient cause unless such cause makes out an exceptional and rare circumstance which occur beyond the control of the defendant seeking extension for filing the written statement. This interpretation is based on the purposeful construction of the rule aimed at striking the mischief that results in by the defendant's strategy to prolong the adjudication of the suit by not filing a written statement within a reasonable time."

13. It may be noted that the aforesaid Rule 3 stands amended with effect from 06.1.2007. However, the amended Rule is not applicable to the present case.

14. It is clear from the order sheet dated 05.2.2003 that on the said date the respondent was asked to file the replication within two weeks after written statement was filed. On the next date of hearing, the Presiding Officer was on leave and no order for extension of time was passed. Thereafter, on the very next date of hearing i.e. 8th January, 2004, the Joint Registrar noted the request of the respondents for grant of time to file replication. Joint Registrar did not pass any order rejecting or accepting the request but listed the matter before the Court. It is, therefore,

clear that this was the first date on which the respondent had made a request for extension of time but no order was passed on the said date and the matter was listed before the Court to consider and examine the said request. Replication was filed on 24.2.2004 and the Court has allowed extension of time subject to payment of costs of Rs.3,000/-. Therefore, it cannot be said that the appellant had made two or more request for extension of time for filing replication. The first request for extension of time for filing of replication was made on 8.1.2004 and considered and allowed on 3.8.2004 after 24.2.2004 when the replication was filed.

15. We may also note that the appellant did not raise any objection and rely upon Rule 3 of Chapter VI of the Rules before the learned Single Judge. The appellant did not urge before the learned Single Judge that the respondents had not filed a written application as required under Rule 3 and, therefore, the request for extension of time to file replication should be rejected. If any such objection had been raised at the appropriate time, the respondent could have filed a formal application to deal with the technical plea and thereupon appropriate order could have been passed. The appellant did

not object to the oral application before the learned Single Judge. In appellate proceedings, objection in this regard should not be permitted and allowed to be raised as the respondent-Union of India is prejudiced and prevented from taking remedial steps.

16. Keeping in view of the above facts and circumstances, we do not find any merit in the present appeal and the same is accordingly dismissed. Parties shall appear before the learned Single Judge on 20th August, 2007.

17. The respondent will also be entitled to costs of the present appeal, which is quantified at Rs.5000/-.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

AUGUST 3 , 2007.
RN/P